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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,454	09/17/2003	Mark L. Jensen	760-68	4333

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EXAMINER
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GHERBI, SUZETTE JAIME J

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



# Office Action Summary

Application No.

10/664,454

Applicant(s)

JENSON, MARK L.

Examiner

Suzette J Gherbi

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2005 and 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 28-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/26/03; 12/11/03</u> .  | 6) <input type="checkbox"/> Other: _____                                    |



## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 28-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species and groups, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/19/05.
2. Applicant's election with traverse in the reply filed on 5/19/05 is acknowledged. The traversal is on the ground(s) that no extensive search is required and that the search would overlap. This is not found persuasive because groups have acquired a separate status in the art as shown by their different classification, and varied search the restriction for examination purposes as indicated is proper. The requirement is still deemed proper and is therefore made FINAL.
3. Claims 1-27 will be prosecuted along with elected species A figures 1-4 and 6

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.



5. Claims 11-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 11 recites the limitation "said reservoir". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 11-22 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Hoganson et al. 2003/0074049. Hoganson et al. discloses the claims as currently presented comprising: a first polymeric liner; a second polymeric liner (see 2c for both liners 22); an intermediate structural member (10) interposed between the first and second liners wherein the structural member is defined by solid segments (the struts) and openings (the cells) there between such that the first liner *can be bonded [0095] to the second liner through the openings to format least one pocket about the solid segments*; and a bioactive agent located within the pocket/cell about the solid segments



of the intermediate structural member (this last limitation is met because the second polymeric layer 22 see figure 2c is bonded to/through the stent cells (24) to joined to the inner or first layer polymeric layer and the drugs are incorporated into the pores of the polymer therefore the bioactive agent is in this pocket/cell *read section [0078, section0095 that states compress against the stent and section [0105]]*). See section [0066] for stent details; [0105-0116] for drug/agent details; [0079] for varying the porosity; and [0071- 0076] tables 1 and 2 for types of polymers utilized.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoganson et al. in view of Golds et al. 6,001,125. Hoganson et al. has been disclosed above however Hoganson et al. does not specify internodal distance. Golds et al. teach methods of manufacturing ePTFE with internodal distances of less than 40 microns (see col. 3, lines 55-60 and col. 4, lines 66-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the polymer layers of Hoganson et al. and manufacture the internodal distance of less than 40 microns because Hoganson discloses that the polymer tube is made from ePTFE and by



Art Unit: 3738

creating the nodes within this range would provide superior radial tensile and suture retention strengths which are required for vascular grafts.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See Pletzer et al. 6,756,007 ; Holloway et al. 6,752,826; Sogard et al. 6,139,573; Brodeur 2004/0122509; show related material.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 571-272-4751.

13. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
Suzette J-J Gherbi  
07 June 2005